

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

May 17, 2007

A meeting of the Board of Environmental Protection was held on Thursday, May 17, 2007 at the Holiday Inn / Ground Round, Augusta, Maine. Nancy Ziegler, Acting Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

**Board:** Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Matt Scott and Nancy Ziegler

Absent: Don Guimond and Virginia Plummer

Note: Board members Nancy Anderson and Denis Culley departed at approximately 1:30 p.m.

<b><u>Staff:</u></b>	Bureau of Land and Water Quality	Dana Murch
	Bureau of Remediation and Waste Management	Diana McLaughlin
	Bureau of Remediation and Waste Management	Scott Whittier
	Bureau of Land and Water Quality	Jennifer Cayer

**Others:** David Littell, Commissioner  
Carol Blasi, Assistant Attorney General  
Mary Sauer, Assistant Attorney General (Pond View Store only)  
Peggy Bensinger, Assistant Attorney General (Downeast LNG matter only)  
Cynthia S. Bertocci, BEP Executive Analyst  
Terry Hanson, Administrative Assistant

***(Meeting adjourned at approximately 4:45 p.m.)***

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:** Commissioner David Littell reported the following:

Flooding: The Patriots Day flooding resulted in various environmental impacts from combined sewer systems and residential houses. Coastal waters will have high levels of bacteria due to these waste discharges. The Kennebunk wastewater treatment works facility was underwater for several days and thus resulted in a direct discharge of sewage. Residential oil storage tank malfunctions due to basement flooding and broken pipes have resulted in petroleum discharges from sump pumps. The Department has reassigned some of its response staff to the Southern Maine area to provide additional resource assistance.

Train Derailment: The Department responded to the recent train derailment near Van Buren. The only release was propane, with no risk to the nearby river.

Climate Registry: Thirty states, several Indian tribes and two Canadian entities are working together to fund an entity to develop and manage a common registry for carbon reduction projects under consistent and common measurement and accounting protocols.

Legislature: Modifications to the shoreland zoning law will clarify a requirement to replace removed trees with trees of a like kind and size. This change should support the efforts of municipal code enforcement officers implementing shoreland zoning requirements.

Regional Greenhouse Gas Initiative (RGGI) bill passed out of committee.

Water Withdrawal Rules were amended and have been passed unanimously by the committee.

Deca - The House endorsed the bill that bans the flame retardant Deca. The Department anticipates possible amendment from the Senate. There is strong majority support.

Significant Wildlife Habitat – A preliminary vote (possibly this afternoon or next week) is anticipated concerning vernal pools and wading bird habitat. No amendments to the vernal pool rules; however, one change was made to the wading bird habitat which clarifies the set back requirements for lakes and ponds. The modification will allow that wetland delineation on a lake or a pond can be performed by a trained wetland delineator verify the 250 foot habitat line rather than require a bird expert.

Composting Bill – The Agriculture Committee voted to move jurisdiction from the DEP to the Department of Agriculture. The Department is working with the Joint Standing Committee on Natural Resources to draft a letter to the Agriculture Committee supporting this initiative.

Education and Outreach: The Department will undertake educational outreach for the vernal pool rules. Following staff training, the Department will be assisting planning boards, trade associations and municipalities with implementation of this rule, including information on the identification of a vernal pool. Press releases and a news segment with Bill Green's on the Maine outdoors kicks off the DEP's public outreach efforts.

Red Shield: The Department has sent a letter to Red Shield identifying the criteria under which the company would be able to burn wood from construction demolition debris (CDW). The facility is in compliance with all the criteria and is gearing up to burn 25% CDW. Additionally, Red Shield is working with the University of Maine on lignite extraction and ethanol production. The Department is pursuing enforcement action associated with Red Shield's recent air and solid waste violations.

Board Jurisdiction: The Department received a request for a public hearing and Board jurisdiction over an application to construct a boat ramp in Madawaska. The preliminary determination is that the request does not meet criteria for BEP jurisdiction or a hearing.

#### QUESTIONS:

Board member Elizabeth Ehrenfeld asked for an update on the outdoor wood boiler bill.

*The Joint Standing Committee on Natural Resources will conduct a work session on this bill to discuss which components of the bill will move forward. Currently the bill identifies requirements for setbacks and technology standards for boilers. The Department is seeking provisions that would address the 20 to 30 existing units that are operating with negative environmental impacts. The Department has provided possible proposals for these existing units; and hopes for Legislative guidance on how to address existing units.*

Board member M. Wing Goodale expressed concern regarding recycling of compact fluorescent bulbs and the lack of information associated with proper disposal.

*Commissioner Littell explained that the recent press concerning the residential clean-up issue over a broken bulb has generated much media concerning the compact fluorescent bulbs in general. DEP's Bureau Director Mark Hyland will appear on the Today Show and Morning Show to discuss mercury spills from these bulbs. The Department's message will be that these bulbs save energy but it is important to dispose of the bulbs properly. In conjunction with this recent spill and in an effort to provide more detailed education and outreach, the Department has posted clean-up methods for broken bulbs for carpet and hard flooring surfaces. [He noted that the clean-up methods have been tested and found to be effective for hard floor surfaces.] The Department's web page also contains information on where to dispose of these bulbs. The Department is working with the Public Utilities Commission to develop education and outreach initiatives on the proper care and disposal of these bulbs. The individual who broke the compact florescent bulb and opted not to clean up the mercury spill because of the cost estimate that they received from Clean Harbors has been contacted by the Department with an offer to send a responder in to clean up the spill.*

**B. COMMENTS FROM THE BEP CHAIR: NONE**

**C. EXECUTIVE ANALYST COMMENTS:** Ms. Bertocci distributed a list of exhibits from last week's hearing on the Androscoggin River Appeals and asked Board members to check it to ensure that they have copies of all handouts from the parties.

**D. BOARD CALENDAR:** Reviewed

**E. DEPARTMENTAL ORDERS:** Small Scale Hydro Project in Carrabasset Valley – Staff provided a briefing on this project explaining that it is associated with the development of Hut-to-Hut trail system for western Maine mountains. DEP permitted the construction of stream dams for hydro power for the huts. There are no fish passage issues associated with these projects because of the vertical pitch of the streams and the absence of the fish in the headwaters.

**F. EXECUTIVE SESSION:** None

**II CONSENT AGENDA ITEMS**

Board voted (8-0-0-2) to approve consent agenda items 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 as presented.

*Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Don Guimond and Virginia Plummer were absent.*

1. MW SEWALL & CO., West Bath, Yarmouth, Brunswick, Scarborough, Portland – Administrative Consent Agreement (BAQ)
2. WAUSAU PAPERS OTIS MILL, INC., Jay – Administrative Consent Agreement (BAQ)
3. ALFOND YOUTH CENTER, Oakland – Administrative Consent Agreement (BLWQ – Land)
5. RANDALL WILLIAMSON, Nobleboro – Administrative Consent Agreement (BLWQ – Land)
6. DEARBORN BROTHERS CONSTRUCTION, INC., Buxton – Administrative Consent Agreement (BLWQ – Land)
7. MURRAY LAPLANT & SONS, INC., Aurora – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
8. BIRGITTA PARKER, Rangeley – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
9. DAN MCMANUS and CHENARD CONSTRUCTION, INC., Livermore – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
10. JPSGJ REALTY HOLDINGS, LLC and HANLEY CONSTRUCTION, INC., Bristol, – Administrative Consent Agreement (BLWQ – Land)
11. STEVE MCGEE and JEFF MALINOWSKI and MICHAEL CHICK, Pittston – Administrative Consent Agreement (BLWQ – Land)

Board voted (8-0-0-2) on a motion to table action on consent agenda #4 Mark Siegenthaler, Lincolnville.

4. MARK SIEGENTHALER, Lincolnville – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)  
*Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Don Guimond and Virginia Plummer were absent.*

### III. Regular Agenda

1. ANDROSCOGGIN RIVER // PETITION FOR MODIFICATION, REVOCATION OR SUSPENSION OF PERMITS AND WATER QUALITY CERTIFICATIONS FOR:
- FPL Energy Maine Hydro LLC – Brunswick #03-4458-0530 – Lewiston Falls Hydro Project L-009206-35-A-N and Gulf Island-Deer Rips Project L-17100-33-O-N;
  - Topsham Hydro Partners – Pejepscot Hydro Project L-007867-35-A-A;
  - Miller Hydro Group – Worumbo Hydro Project L-10930-35-A-N;
  - VERSO Androscoggin LLC - Riley-Jay-Livermore Otis Hydro Project L-18829-33-A-N
  - Rumford Falls Hydro LLC – L-17643-33-A-N
  - Ridgewood Maine Hydro Partners, L.P. - Lower Barker Mill L-08-4287-01010 - Upper Barker Mill L-02/49-6848B-01010
  - Hackett Mills Hydro Associates - Hackett Mills Hydro L-10052-35-A-N; and
  - Ridgewood Maine Hydro Partners, L.P. – Marcal Hydro Projects L-17778-33-C-N

Staff: Dana Murch, Bureau of Land and Water Quality

The Board voted (5-2-1-2) on a motion to dismiss the petition to modify, revoke or suspend the water quality certifications for Brunswick, Pejepscot, Worumbo, Lewiston Falls, Upper Androscoggin, Gulf Island-Deer Rips, Riley-Jay-Livermore, Otis, Rumford Falls, Lower Barker Mill, Upper Barker Mill, Hackett Mills and Marcal Hydro projects located on the Androscoggin River and Little Androscoggin River. The petition submitted by Friends of Merrymeeting Bay and Doug Watts sought upstream and downstream passage for American eel. The vote was taken pursuant to 38 M.R.S.A. section 341-D(3) and 09-069 CMR Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters.

*Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Matt Scott and Nancy Ziegler voted to support the motion. Board members Ernest Hilton and Denis Culley voted opposed. Board member M. Wing Goodale recused. Board members Don Guimond and Virginia Plummer were absent.*

**2. POND VIEW STORE, Ellsworth (appeal of Department denial for 12-month extension for temporary out of service status)**

Staff: Diana McLaughlin, Bureau of Remediation and Water Management

The Board voted (8-0-0-0-2) on a motion to deny the appeal of Pond View Store and affirm with modification the Department's denial of a time extension for temporary out-of-service status for the underground storage tanks. The vote was taken pursuant to 38 M.R.S.A. §561 et seq., 06-096 CMR Chapter 691, Maine Rules for Underground Oil Storage Facilities and Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters. The modifications to the order were as follows:

Section 6B. paragraph 3 to be deleted:

Discussions between Department staff and the last operator of.....

Section 6D, paragraphs 2 and 3 to be deleted:

On or about August 8, 2006....

If the appellant is exempt....

*Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Don Guimond and Virginia Plummer were absent.*

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**THE BOARD RECONVENED AT 1:00 P.M. FOR THE FOLLOWING:**

Public Hearing: CHAPTER 139, TRANSPORTATION CONFORMITY / NEW

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**III. Regular Agenda (continued)**

**3. DOWNEAST LNG, DOWNEAST PIPELINE L.L.C. // ROBBINSTON [#L-23432-26-A-N, #L-23432-TG-B-N, and #A-000960-71-A-N] (Motion by intervenor Save Passamaquoddy Bay, et. al. to Deny Applications without Prejudice)**

Staff: Cynthia S. Bertocci, BEP Executive Analyst

Staff: Jennifer Cayer, Bureau of Land and Water Quality

The Board voted (5-0-1-4) on a motion to deny the motion of intervenor Save Passamaquoddy Bay et. al. The Board determined that it would continue to process the application and proceed to public hearing. The vote was taken pursuant to 06-096 CMR Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters and Chapter 30, Special Rules for Hearings on Applications of Significant Public Interest.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton and Nancy Ziegler voted to support the motion. Board member Matt Scott abstained. Board members Nancy Anderson, Denis Culley, Don Guimond and Virginia Plummer were absent.*

*Next Regular Meeting – Thursday, June 7, 2007 – **Holiday Inn / Ground Round***